



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jay-Em Corporation

File: B-226386

Date: March 16, 1987

DIGEST

Protest filed more than 10 working days after protester knew the basis of protest is untimely under our Bid Protest Regulations.

DECISION

Jay-Em Corporation (Jay-Em) protests the issuance of a second request for best and final offers in connection with request for proposals (RFP) No. DAAE07-86-R-B203, issued by the Army Tank Automotive Command for a quantity of road wheel assemblies. We dismiss the protest as untimely.

The solicitation was issued on October 15, 1986, and requested proposals for the supply of two different parts for a period of 5 years. The first item, NSN2530-01-167-8106, was solicited as line items 1 and 2, and bidding was restricted to domestic sources. The second item, NSN-2530-02-201-4816, was solicited as line items 3 and 4 and was unrestricted as to source. Prices were to be given on an F origin basis for all four line items, and proposals were due by November 17.

The protester bid on all four line items. By letter of December 5, after previously concluding discussions with the protester on all four line items, the contracting officer formally closed negotiations, and requested best and final offers (BAFO) on all four line items by December 15. On January 16, 1987, the protester was awarded a contract for the supply of line items 1, 2 and 3.

The record indicates on February 2, the agency orally advised the protester that a request for a second BAFO was being issued and the reasons why it was issued. On February 9, the contracting officer confirmed in writing the request for the

submission of a second BAFO on line item 4. The second BAFO was due on February 27, in accordance with the amendment. On February 27, Jay-Em filed its protest in our Office alleging that the request for a second BAFO on line item 4 was a violation of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610 (d)(3) (1986), which prohibits the disclosure of an offeror's prices to other offerors during written or oral discussions.

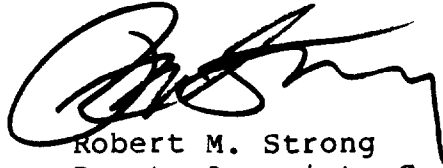
Generally, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), protests based upon alleged improprieties in a solicitation which are apparent prior to the bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested prior to the next closing date.

Here, however, we believe that Jay-Em's protest against the contracting agency's decision to issue the amendment calling for a second BAFO does not fall under the above stated rule. Jay-Em argues that because an award already had been made to the protester for part of the requirement before second BAFO's were solicited, its prices were public knowledge and its competitive position jeopardized. In our view, the issuance of the BAFO, which permitted other offerors to adjust their prices based on Jay-Em's prices is the basis of Jay Em's protest. Thus, Jay-Em knew its basis of protest when it was advised of the issuance of the amendment. Under the section of these circumstances, we believe that this protest falls under the section of our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), which provides in pertinent part that " . . . protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier."

The agency has provided us with a copy of a letter dated February 9, from the protester to the office of Senator John Glenn. The letter acknowledges having received oral notice of the agency's intent to issue the second request for a BAFO on February 2. We have held previously that oral notification of the basis for a protest starts the 10-day period running and a protester may not delay filing its protest until receipt of written notification of the protest basis which merely reiterates the basis of the protest originally orally learned. See Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, Feb. 20, 1986, 86-1 C.P.D. ¶ 182. Since the protester received oral notice on February 2, 1987 and did not protest until more than 10 working days after

this oral notice, this protest must be deemed untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong
Deputy Associate General Counsel